File: (b) (6) – Kansas City. MO Date: MAR - 8 2018

In re: (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Erin Elizabeth McGaughey, Esquire

ON BEHALF OF DHS: Jason A. Oropeza
Assistant Chief Counsel

APPLICATION: Continuance; administrative closure

The respondent, a native and citizen of Mexico, appeals from the decision of the Immigration Judge, dated March 24, 2017, denying his request for a continuance and his request for administrative closure. The appeal will be dismissed.

We review findings of fact determined by an Immigration Judge, including credibility findings, under a "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review questions of law, discretion, and judgment, and all other issues in appeals from decisions of Immigration Judges de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

A Notice to Appear was issued in this proceeding on April 7, 2014, and the respondent made several appearances before the Immigration Judge. It was agreed that the respondent is not eligible for any relief, either before the Board or before the Immigration Judge. He originally applied for adjustment of status under the program for Special Agricultural Workers, section 210 of the Immigration and Nationality Act, 8 U.S.C. § 1160, but concedes we lack jurisdiction over this issue (Respondent's Br. at 5). We adopt and affirm the decision of the Immigration Judge. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994).

We first agree with the Immigration Judge that the respondent did not present the requisite good cause for a continuance (IJ at 3). *See* 8 C.F.R. §§ 1003.29 and 1240.6; *see also Matter of Perez-Andrade,* 19 I&N Dec. 433, 434 (BIA 1987) (the decision to grant or deny a continuance for good cause is within the Immigration Judge's discretion and will not be overturned on appeal unless it appears that the respondent was deprived of a full and fair hearing). Here, the respondent is removable as charged and is not eligible for any relief. The inquiry into whether a continuance should be granted is focused on "the apparent ultimate likelihood of success on" the application for relief. *Matter of Hashmi,* 24 I&N Dec. 785, 790 (BIA 2009). As the respondent has no relief available, the Immigration Judge properly denied an indefinite continuance (I.J. at 3).

Further, under the factors outlined in *Matter of Avetisyan*, 25 I&N Dec. 688 (BIA 2012), administrative closure is not warranted in this case. The respondent essentially makes a humanitarian appeal to administratively close the case, so that he may care for his ill spouse, and

he also notes that he has been present in the United States for nearly 30 years (Respondent's Br. at 5). The Immigration Judge properly denied the request for administrative closure and we decline any new request made before the Board. *See Matter of Avetisyan* at 688 (holding that it is not appropriate to administratively close proceedings on the basis of "an event or action that may or may not affect the course of an alien's immigration proceedings").

The Department of Homeland Security (DHS) has elected to proceed and such prosecutorial discretion is within the hands of the DHS. Neither the Immigration Judge nor this Board has authority to review this decision. *Matter of E-R-M- & L-R-M-*, 25 I&N Dec. 520, 522-24 (BIA 2011); *Matter of Bahta*, 22 I&N Dec. 1381, 1391-92 (BIA 2000); *Matter of G-N-C-*, 22 I&N Dec. 281, 284 (BIA 1998). As the respondent has not provided a "persuasive reason" for this case to be administratively closed, the appeal will be dismissed. *See Matter of W-Y-U-*, 27 I&N Dec. 17, 20 (BIA 2017).

ORDER: The appeal is dismissed.

FOR THE BOARD